

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KAREN BUECHE, ) Case No. 06-12049  
 )  
 Plaintiff. ) Arthur J. Tarnow  
 ) District Judge  
 v. )  
 ) Donald A. Scheer  
 THE PRUDENTIAL INSURANCE COMPANY OF ) Magistrate Judge  
 AMERICA, )  
 )  
 Defendant.

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**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS COUNT II  
AND GRANTING DEFENDANTS' MOTION TO STRIKE [DE 9]**

In this ERISA action Plaintiff claims that she is entitled to long term disability benefits from Defendant Prudential. Plaintiff's complaint contains three claims: (1) a claim for recovery of full benefits under § 502(a) of ERISA; (2) a claim for breach of fiduciary duty under § 502(a)(3) of ERISA; and (3) a claim for violations of procedural due process under § 502(a)(3) of ERISA.

Before the Court is Defendants' motion to dismiss Count II of Plaintiff's complaint and to strike paragraph 43 of Plaintiff's complaint as well as sub-paragraphs B, C, and E [DE 9]. Defendants argue that Plaintiff lacks standing to assert a breach of fiduciary duty claim under § 502(a)(3).

On July 10, 2006, the Court ordered Plaintiff to show cause within 10 days why Defendants' motion should not be granted. Plaintiff did not respond to the Court's show cause order.

The Court finds that Plaintiff lacks standing to assert a claim for breach of fiduciary duty under § 502(a)(3) because the statute affords her adequate remedies to pursue her claim for

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benefits. *Wilkins v. Baptist Healthcare System, Inc.*, 150 F. 3d 609, 615 (6th Cir. 1998).

As to Defendants' motion to strike paragraph 43 and subparagraphs B, C, and E, the Court finds that these paragraphs should be stricken without prejudice. Therefore,

**IT IS HEREBY ORDERED** that Defendants' motion to dismiss Count II is GRANTED and that Count II is DISMISSED.

**IT IS FURTHER ORDERED** that Defendants' motion to strike is GRANTED and that Paragraph 43 and subparagraphs B, C, and E are DISMISSED WITHOUT PREJUDICE.

SO ORDERED.

s/Arthur J. Tarnow  
Arthur J. Tarnow  
United States District Judge

Dated: August 2, 2006

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 2, 2006, by electronic and/or ordinary mail.

s/Theresa E. Taylor  
Case Manager